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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,187	02/05/2004	Joe A. Wright	4688 (OSI0054/US/8)	7196
7590		03/08/2007		
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			EXAMINER	
			CHEN, VIVIAN	
			ART UNIT	PAPER NUMBER
			1773	
			MAIL DATE	DELIVERY MODE
			03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

C

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/774,187	Applicant(s) WRIGHT ET AL.	
	Examiner Vivian Chen	Art Unit 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see Detailed Advisory Action. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Detailed Advisory Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Vivian Chen
Primary Examiner
Art Unit: 1773

DETAILED ADVISORY ACTION

Response to Proposed Amendments

1. The proposed amendments will **NOT** be entered because they raise new issues that would require further consideration and/or search.

Support for the proposed newly added recitation of "wherein n is an integer from 1 to 5" is only present in Application Nos. 09/698,554 and 10/091,754. Applications No. 09/384,464 and earlier filed Applications only disclose n values ranging from 1 to 3.

Therefore, while the proposed amendments would result in claims 8-11, 14-22 having an effective filing date of **03/05/1998** which is sufficient to overcome the outstanding rejections of those claims under various provisions of 35 U.S.C. 102 and 103(a); the proposed amendments would only result in claims 1-7, 12-13 having an effective filing date of **10/27/2000** which is insufficient to fully overcome the outstanding rejections under various provisions of 35 U.S.C. 102. Furthermore, the proposed amendments would require significant further consideration due to the possible application of other provisions of 35 U.S.C. 102 resulting from changing the effective filing date of various claims and thereby requiring new grounds of rejection.

Terminal Disclaimer

2. The terminal disclaimer filed on 12/8/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,660,828 has been reviewed and is **NOT** accepted.

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An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34

(a). See 37 CFR 1.321(b) and/or (c).

3. The double patenting rejections based on:

(a) U.S. Patent Nos. 6,686,051 and 6,383,651 and 6,423,418; and

(b) copending Application No. 10/966,528 (US 2005/0048213);

have been withdrawn in view of the Terminal Disclaimers filed 6/30/2006.

Double Patenting

4. The double patenting rejections based on U.S. Patent No. 6,660,828 remain outstanding because the terminal disclaimer filed 12/8/2006 has **NOT** been accepted.

Response to Arguments

5. Applicant's arguments filed 12/8/2006 have been fully considered but are moot since the proposed amendments have **NOT** been entered.

1. Applicant's arguments filed 12/8/2006 have been fully considered but are not persuasive.

(A) Applicant argues that the proposed amendments would result in all claims having an effective filing date of 3/5/1998 which would overcome all outstanding rejections under 35 U.S.C. 102 and 103. However, as discussed above, the proposed amendments would only result in claims 1-7, 12-13 having an effective filing date of **10/27/2000** which is insufficient to fully

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overcome the outstanding rejections under 35 U.S.C. 102(b) and/or would require further consideration because of the possibility of new rejections based on other provisions of 35 U.S.C. 102 due the change in effective filing date.

Conclusion


2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney, can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 5, 2007


Vivian Chen
Primary Examiner
Art Unit 1773